

Foreign Judgments Regulations (Amendment) 1993 No. 143

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 143

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

FOREIGN JUDGMENTS ACT 1991

FOREIGN JUDGMENTS REGULATIONS (AMENDMENT)

Section 16 of the *Foreign Judgments Act 1991* ('the Act') provides, in part, that the Governor-General may make regulations prescribing all matter required or permitted by the Act to be prescribed.

Part 2 of the Act provides, amongst other matters, for the registration and enforcement in Australia of judgments given in courts of foreign countries to which the Act has been extended.

The main purpose of the proposed Regulations is to extend Part 2 of the Act to the Commonwealth of the Bahamas, the Province of British Columbia (Canada), the British Virgin Islands, the Cayman Islands, the Commonwealth of Dominica, the Falkland Islands, the Republic of Fiji, France, the Federal Republic of Germany, Gibraltar, Grenada, Hong Kong, the State of Israel, Italy, Japan, the Province of Manitoba (Canada), Montserrat, Papua New Guinea, St. Helena, the Federation of St. Kitts and Nevis, St. Vincent and the Grenadines, the Republic of Seychelles, the Republic of Singapore, the Solomon Islands, Tuvalu and the United Kingdom ('the reciprocating countries').

Subsection 5(1) of the Act provides that the Regulations may provide that Part 2 of the Act extends in relation to a country if the Governor-General is satisfied that, in the event of the benefits conferred by Part 2 being applied to money judgments given in the superior courts of that country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of money judgments given in all Australian courts.

Regulations applying Part 2 of the Act to foreign countries the Act will replace existing State and Territory legislation which makes provision, on the basis of reciprocity, for the enforcement of foreign superior court civil judgments for payment of money by registration in State and Territory Courts.

The Commonwealth of the Bahamas, the Province of British Columbia (Canada), the British Virgin Islands, the Cayman Islands, the Commonwealth of Dominica, the Falkland Islands, the Republic of Fiji, Gibraltar, Grenada, Hong Kong, the Province of Manitoba (Canada), Montserrat, Papua New Guinea, St. Helena, the Federation of St. Kitts and Nevis, St. Vincent and the Grenadines, the Republic of Seychelles, the Republic of Singapore, the Solomon Islands, Tuvalu and the United Kingdom have reciprocal enforcement of judgments legislation similar to that of the Act (and of nearly all the States and Territories). The relevant

legislation has been applied to Australia or an undertaking has been given to apply that legislation to Australia by the authorities of each of these countries.

France, the Federal Republic of Germany, the State of Israel, Italy and Japan have laws which apply to judgments of Australian courts. These laws provide substantially the same standard of treatment to those judgments as is provided by Part 2 of the Act to judgments of superior courts of countries to which that Part applies.

Under the relevant law of each of these countries, the money judgments of all Australian superior courts will be enforceable respectively in the reciprocating countries.

The requirements of subsection 5(1) of the Act having been met, the Regulations provide that Part 2 extends to the reciprocating country.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 amends the definition of "the Act" for the purposes of the Regulations. The regulation also defines "Privy Council".

Regulation 3 specifies, in effect, that for the purposes of the Act the courts listed in column 3 are taken to be superior courts of the respective countries listed opposite in column 2. The Note at the end of Regulation 3 explains differences in the style of the Eastern Caribbean Supreme Court arising from the usage of countries which include that court in their court system.

The proposed Regulations commenced on gazettal.